



Office of the Public Advocate

Safeguarding the rights and interests of people with disability

12 July 2021

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
community.affairs.sen@aph.gov.au

Dear Committee Secretary,

Senate Community Affairs Legislation Committee Inquiry: National Disability Insurance Scheme Amendment (Improving Supports for At Risk Participants) Bill 2021

The Office of the Public Advocate (OPA) is a Victorian statutory office, independent of government and government services that works to safeguard the rights and interests of people with disability. The Public Advocate is appointed by the Governor in Council and is answerable and accountable to the Victorian Parliament. There are similar offices in each state and territory across Australia.

A key function of the Public Advocate is to protect persons with disability from abuse, neglect and exploitation; and to undertake advocacy for persons with a disability on a systemic or individual basis.¹ To undertake these functions, I have a range of powers, including to be a guardian where appointed by the Victorian Civil and Administrative Tribunal (VCAT) and I may investigate any complaint or allegation that a person is under inappropriate guardianship, is being exploited or abused or is in need of guardianship.²

My office plays a key safeguarding role for people with cognitive impairment and mental illness in Victoria. In 2019-20, OPA was involved in 1792 guardianship matters (950 of which were new), 430 investigations, and 284 individual advocacy matters. The majority (72 per cent) of eligible guardianship clients were National Disability Insurance Scheme (NDIS) participants, compared with 58 per cent in the previous year.

Community Visitors are Governor in Council appointed volunteers who visit closed environments, including specialist disability accommodation enrolled dwellings.³ The Commonwealth *Community Visitor Schemes Review* showed that Community Visitors are a valuable part of the safeguarding regimes for NDIS participants who experience vulnerability and that they should be reflected within the NDIS Quality and Safeguarding Framework.⁴

OPA coordinates the Community Visitors Program in Victoria and I am Chair of the Combined Board. I reported on 20 May 2021 to the Joint Standing Committee on the NDIS in its recent public hearing as part of its Inquiry into the NDIS Quality and Safeguards Commission. I advised the committee that, so far this year, Community Visitors had made 41

¹ *Guardianship and Administration Act 2019* (Vic) s 15(b)–(c).

² *Ibid* s 16(1)(a), (g).

³ *Disability Act 2006* (Vic) s 30A.

⁴ Department of Social Services for the Disability Reform Council, Council of Australian Governments, *Community Visitor Schemes Review* (2018) 9.

high-risk abuse referrals to it at that time. I had only received brief feedback about some of the action to be taken by the NDIS Commission (for example, referral to the reportable incident team). My office received further advice about the action on the remaining referrals one week after the hearing. However, I still do not know the outcomes of any of those referrals.

The Bill implements certain recommendations of the independent review of the adequacy of the regulation of the supports and services provided to Ms Ann-Marie Smith.

The death of Ms Smith was a tragedy, and one that I fear will repeat itself with the current barriers that exist to information sharing which hinder the ability of my office to undertake its legislated safeguarding role. As one example, OPA's Investigations Team is often unable to obtain information directly from the National Disability Insurance Agency (NDIA) regarding a person's engagement with the NDIS, unless the information is provided by another person involved in the matter, such as a family member or the person themselves. I note, OPA has its own confidentiality provisions which apply to the disclosure or communication of information relating to the affairs of an individual under the *Guardianship and Administration Act 2019*.

I wish to make the following key points in response to this inquiry:

- The NDIA should work collaboratively with state governments and state statutory bodies with safeguarding responsibilities as this facilitates the availability of the NDIS to participants and people with disability.
- The commission should work collaboratively with state governments and statutory bodies with safeguarding responsibilities to improve the quality of services and to protect participants from abuse, neglect and exploitation.
- My office has documented numerous examples of the failure of the commission to inform areas of my office, including the Adult Protection and Advocacy Program, Disability Act Officers and the Community Visitors Program, about the outcome of issued raised with them.

The commission's failure to communicate the outcomes of complaints or high-risk abuse referrals means that where poor, inadequate or unsafe service responses resulting in harm to participants are identified, my office often is unaware of what specific actions have been taken to address the concerns. As a consequence, my office is unable to reassure vulnerable participants that risks to their safety will be addressed and that they will be safe from harm.

This fails participants, leaving them feeling frustrated, disempowered and crucially, some at further risk of serious harm. For my office, this can mean a duplication of safeguarding efforts or a reduction in safeguarding support to individuals because the matter has been referred to the commission and the belief that it may do something, sometime in the future.

- Effective sharing of information, particularly timely advice on any action that will be or has been taken, will lead to pathways out of complex situations and ensure that adequate and appropriate safeguarding measures are in place to address harm.
- The NDIA and commission provisions need to change to ensure that there can be exchanges of information that facilitate follow up of participants and their circumstances to ensure that beneficial outcomes have resulted.

I am an independent statutory officer charged with responsibility to safeguard and promote the rights of people with disability, and to protect them from abuse, neglect and exploitation. Legislative and practice barriers must be addressed to improve collaboration and information sharing between offices such as mine and the NDIA and commission, to enable each body to fulfil its broad mission and statutory responsibilities to improve lives and outcomes for people with disability.

Yours sincerely,

Dr Colleen Pearce
Public Advocate

